



ORGANIZATION FOR THE PROTECTION
AND ADVANCEMENT OF SMALL
TELEPHONE COMPANIES

21 DUPONT CIRCLE, N.W., SUITE 700
WASHINGTON, D.C. 20036
202/659-5990 • 202/659-4619 (FAX)

DOCKET FILE COPY ORIGINAL

December 16, 1994

RECEIVED

DEC 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington, DC 20554

Re: In the Matter of
TELEPHONE COMPANY-
CABLE TELEVISION
Cross-Ownership Rules,
Sections 63.54-63.58 and
Amendments of Parts 32, 36
61, 64, and 69 of the
Commission's Rules to
Establish and Implement
Regulatory Procedures for
Video Dialtone Service
CC Docket No. 87-266
RM-8221

Dear Mr. Caton:

Please find enclosed for filing the original and eleven copies of the Organization for the Protection and Advancement of Small Telephone Companies' comments in the above-captioned proceeding.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa M. Zaina", followed by a long horizontal line.

Lisa M. Zaina
General Counsel

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

RECEIVED

DEC 16 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
TELEPHONE COMPANY-)	CC Docket No. 87-266
CABLE TELEVISION)	
Cross-Ownership Rules,)	
Sections 63.54-63.58)	
)	
and)	
)	
Amendments of Parts 32, 36,)	RM-8221
61, 64, and 69 of the)	
Commission's Rules to)	
Establish and Implement)	
Regulatory Procedures for)	
Video Dialtone Service)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

OPASTCO
21 Dupont Circle, NW
Suite 700
Washington, DC 20036
(202) 659-5990

December 16, 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

DEC 16 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
TELEPHONE COMPANY-)	CC Docket No. 87-266
CABLE TELEVISION)	
Cross-Ownership Rules,)	
Sections 63.54-63.58)	
)	
and)	
)	
Amendments of Parts 32, 36,)	RM-8221
61, 64, and 69 of the)	
Commission's Rules to)	
Establish and Implement)	
Regulatory Procedures for)	
Video Dialtone Service)	

**COMMENTS OF
THE ORGANIZATION FOR THE PROTECTION AND
ADVANCEMENT OF SMALL TELEPHONE COMPANIES**

I. INTRODUCTION

On November 7, 1994, the Federal Communications Commission (FCC or Commission) released the text of a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking¹ concerning the matter of the cable cross-ownership prohibition and video dialtone service. The Organization for the Protection and

¹In the Matter of TELEPHONE COMPANY-CABLE TELEVISION Cross-Ownership Rules, Sections 63.54-63.58 and Amendments of Parts 32, 36, 61, 64, and 69 of the Commission's Rules to Establish and Implement Regulatory Procedures for Video Dialtone Service, CC Docket No. 87-266, RM-8221, Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking, 59 FR 63909 (December 12, 1994). (FNPRM)

Advancement of Small Telephone Companies (OPASTCO) hereby submits its comments in response to the Commission's FNPRM.

OPASTCO is a national trade association of more than 440 independently owned and operated telephone companies serving rural areas of the United States and Canada. Its members, which include both commercial companies and cooperatives, together serve over two million customers. The majority of OPASTCO members serve remote rural areas with low concentrations of customers. Approximately 25 percent of OPASTCO members provide video programming to their telephone exchange service customers, nearly all pursuant to the rural exemption to the cable cross-ownership restriction. Many of the remaining companies would like to provide cable television service to their communities, but cannot do so due to the federal law prohibiting the provision of video programming by a local exchange carrier (LEC) directly to its telephone exchange customers. Accordingly, OPASTCO has a paramount interest in this proceeding.

II. RAISING THE RURAL EXEMPTION THRESHOLD WOULD BENEFIT REMOTE CUSTOMERS

OPASTCO agrees with the Commission's goals of "fostering the availability to the American public of new and diverse sources of video programming" and "promoting efficient investment in the national telecommunications infrastructure."² OPASTCO believes, in the context of the cross-ownership prohibition, that raising the rural exemption threshold from 2,500 persons to at least

²FNPRM at para. 3.

10,000 persons would help accomplish these goals. OPASTCO believes there are some rural communities that are not receiving quality cable service, or are not receiving cable service at all. Raising the threshold will allow more rural LECs to bring quality video programming to portions of America that continue to be deprived of it, and provide an economic incentive to speed the deployment of a national telecommunications infrastructure. It is quite likely that raising the exemption will spur the installation of integrated optical fiber technology.³

As the Commission recognizes, in rural markets "our prohibition serves little useful purpose since facilities-based competition is not likely to develop or be sustainable in any event."⁴ The demographic and economic characteristics of urban and rural America are very different. Relatively few people occupy vast geographic areas, the terrain can be difficult, and population centers are disparate and smaller than their urban counterparts. Since it takes more physical plant to serve fewer customers, the costs of providing facilities-based services, such as local exchange service and cable television, are higher per customer in rural areas. Allowing small LECs, concurrent with the Commission's video dialtone policies, to provide video services in these rural areas could solve this dilemma. Additionally, it would also allow the LEC to achieve economies of

³John C. Panzar, Information Age Communications Networks for Rural America, 1987, p. 4.

⁴FNPRM at para. 276.

scope and scale that would speed the development of the national information infrastructure.

III. MODIFICATIONS TO THE COMMISSION'S PROHIBITION ARE NEEDED IN RURAL MARKETS

The Commission seeks "comment on appropriate modifications to our prohibition that would permit acquisitions of cable facilities in markets in which two wire-based multi-channel video delivery systems are not viable" and seeks specific "criteria that would permit us to identify those markets."⁵ As stated in Section II, *supra*, rural areas have unique economic and demographic characteristics. Permitting rural LECs to provide video programming directly to their customers will achieve the Commission's goals of "diverse sources of video programming" and "efficient investment in the national telecommunications infrastructure."⁶

OPASTCO agrees with the Commission that it should permit acquisitions of cable facilities in areas in which two wire-based multi-channel video delivery systems are not viable. A regulatory policy that encourages the construction of multiple optical fiber networks would result in the wasteful duplication of facilities. As a result, consumers in these areas would incur substantial increased costs. Increased costs are not the only risk. According to Professor Panzar, a "two pipeline" policy runs the serious risk of becoming a "no pipeline" policy in rural

⁵FNPRM at para. 277.

⁶FNPRM at para. 3.

areas.⁷ A regulatory policy that requires at least two networks in a rural area may mean no network for that area.

Assuming that the Commission raises from 2,500 to at least 10,000 the exemption to the cross-ownership restriction, it may be appropriate to use this standard as the criterion for identification of those markets in which two wire-based multi-channel video delivery systems are not viable. Allowing buy-outs of cable systems by the LECs in these areas would allow for realization of economies of scope and scale that could speed development of broadband networks. During the most recent session of Congress, the Senate Commerce Committee passed legislation, S. 1822, The Communications Act of 1994, which permitted LECs to buy-out cable systems in communities of up to 50,000 inhabitants. OPASTCO also would support the Commission's adoption of this standard.

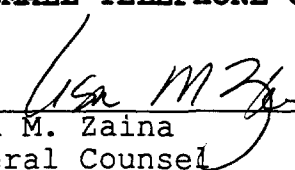
⁷Panzer, Footnote 24, pp. 15-16.

IV. CONCLUSION

OPASTCO believes that the Commission is correct in seeking to raise the rural exemption threshold for the cross-ownership prohibition. Rural LECs have an historic commitment to providing the most advanced communications services to their customers. The Commission is right in seeking to modify its prohibition in areas that cannot support two wire-based delivery systems. Acquisitions would enable rural Americans to have access to diverse sources of video programming and would provide an efficient economic incentive for the construction of a broadband national telecommunications infrastructure. Rural LECs have the expertise and facilities to bring video dialtone service to even the most remote customer.

Respectfully submitted,

**THE ORGANIZATION FOR THE
PROTECTION AND ADVANCEMENT
OF SMALL TELEPHONE COMPANIES**

By: 
Lisa M. Zaina
General Counsel

OPASTCO
21 Dupont Circle, NW
Washington, DC 20036
(202) 659-5990

December 16, 1994